12-26-2012

State v. Johnson Appellant's Brief Dckt. 39573

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39573
	)	
v.	)	
	)	
NICHOLAS DAVID JOHNSON,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

HONORABLE GREGORY CULET
District Judge

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STATEMENT OF THE CASE

Nature of the Case

Nicholas David Johnson appeals from a judgment of conviction for murder in the second degree following a jury trial. On appeal, Mr. Johnson asserts that the district court erred when it admitted, over his objection, several autopsy photographs without conducting the balancing test required under Idaho Rule of Evidence 403. He also asserts that the district court abused its discretion when it imposed a unified life sentence, with fifteen years fixed, and when it denied his Idaho Criminal Rule 35 (*hereinafter,* Rule 35) motion in light of the new information provided in support thereof.

Statement of the Facts and Course of Proceedings

Mr. Johnson was charged with murder in the second degree for his role in the death of Jarmey McCane. (R., pp.23-24.) The charge arose out of an incident that occurred in the early morning hours of June 25, 2011, following a "get-together" at the home of Bill and Stacy Kron. Among those present were the Krons, Ray and Stacy Lopez, Mr. McCane (Stacy Lopez's brother), Mr. Johnson, and Paul Weremecki. Alcohol was being consumed,[1] and the evening consisted of everyone "[j]ust hanging out, talking, [and] visiting." Mr. McCane came late to the get-together, and Ms. Kron

[1] With respect to the alcohol consumption, both sides stipulated to the following facts, which were read to the jury:

> Jarmey McCane's blood alcohol content on June 25th, 2011 at 2:12 a.m. was 0.18. Stacy Lopez's blood alcohol content on June 25, 2011 at 5:00 a.m. was 0.13. Raymond Lopez's blood alcohol content on June 25, 2011 at 5:56 a.m. was 0.11. Nicholas Johnson's blood alcohol content on June 25, 2011 at 8:30 a.m. was 0.069.

(Tr., p.563, L.12 – p.564, L.1.)

could immediately "feel . . . tension" when he was introduced to Mr. Johnson. (Tr., p.271, L.16 – p.283, L.14, p.439, L.8 – p.443, L.25.)

Mr. Weremecki testified that, during the course of the evening, he heard a commotion outside, and when he looked outside, he "saw Bill standing between Nick and Jarmey . . . saying, 'Don't disrespect my house. Don't disrespect my friends that are here.' Kind of bumping the chest, like breaking them up kind of a deal." It looked to him like a fight was either about to happen or had just happened, and he saw Mr. Kron holding Mr. Johnson back and standing between him and Mr. McCane. By the time that he left, he felt like "things kind of calmed down a little bit. The vibe kind of calmed down." When asked whether it seemed "like the defendant let it go," he responded, "It did. It seemed like everybody was pretty calm." At the time that he left, "it seemed like everybody was talking and getting along." (Tr., p.448, L.9 – p.452, L.18.)

The get-together ended between 1:45 a.m. and 2:00 a.m. when Mr. Kron became concerned because, upon returning from relieving himself in his backyard, he heard his wife "say, 'My daughter's here. You guys, please have some respect.'" Mr. Kron testified that, upon hearing his wife say this, and in light of the earlier incident (testified to by Mr. Werenecki), he decided that he was "done with the situation. I went to my room, I grabbed a bat, and I came back out, walked past everybody towards my sliding glass door, and told everybody the party – that it was over. It was time to go."[2] (Tr., p.467, L.24 – p.472, L.11.) Once the bat had been put away and everyone was outside in the street, Mr. Kron began apologizing, first to Mr. Lopez, then to Ms. Lopez,

[2] There is some dispute regarding whether Mr. Kron held the bat in the air when he ordered everyone out of his house, with Mr. Kron denying doing so (Tr., p.473, Ls.5-16), but his wife testifying that "he held it up and he said, 'Just go. Everybody just go.'" (Tr., p.289, Ls.17-21.)

and finally to Mr. McCane. Mr. McCane then apologized to Mr. Kron "for disrespecting me at my – disrespecting my house." Mr. Kron estimated that this series of apologies went on for "approximately five to seven minutes." Mr. Kron did not know where Mr. Johnson was at that time, but he was not in the street with the rest of the group. (Tr., p.474, L.24 – p.477, L.20; p.484, Ls.11-19.)

Robert Deters, a medical examiner for Canyon County, testified concerning the Mr. McCane's cause of death, a single stab wound that "penetrated the right side of the chest and right lung, and as a result of that injury, this individual died." (Tr., p.409, L.15 – p.413, L.25.) Dr. Deters also testified concerning several photographs that were taken during the autopsy. State's Exhibit No. 37 is a photograph of the wound. (Tr., p.415, L.19 – p.417, L.8; State's Exhibit No. 37.) State's Exhibit No. 38 is a photograph of the wound with a probe inserted to show trajectory, and depicts a portion of Mr. McCane's face, including his right ear and part of his chin. (Tr., p.419, L.19 – p.420, L.18; State's Exhibit No. 38.) State's Exhibit No. 39 is "a photograph of the heart and right and left lungs, showing a fairly large stab wound on the lateral right upper lobe." (Tr., p.423, Ls.9-25; State's Exhibit No. 39.) State's Exhibit No. 40 is a photograph "of the right side of the chest with a probe in place." It also shows the inside of the rib cage and appears to show a large portion of the right side of Mr. McCane's chest without skin. (Tr., p.425, L.24 – p.426, L.18; State's Exhibit No. 40.) All four exhibits were admitted over Mr. Johnson's continuing Rule 403 objections. (Tr., p.415, L.19 – p.426, L.18.)

Mr. Johnson testified that, sometime after midnight, Mr. McCane apparently misinterpreted some of his sarcasm and felt disrespected by something he said; this appears to have been the incident described by Mr. Weremecki. As a result,

Mr. Johnson "apologized and shook his hand and told him I didn't mean any hard feelings towards you or anything like that." Sometime between 1:45 a.m. and 2:00 a.m., there was a "ruckus" and Mr. Johnson wasn't sure but felt like someone may have "felt disrespected." As a result, "all of a sudden I see Bill [Kron] come out with a baseball bat and usher us out the door." This caused Mr. Johnson to become "nervous" because,

> I didn't really understand the situation of the bat. I didn't think things were that bad. And the fact that a person that's intoxicated had a baseball bat kind of made me nervous. I let them proceed out the door before me, because I wanted to keep distance. And they proceeded out to the street, so I followed out to the porch. And they happened to be in front of my truck, so I kind of wanted to let the issue resolve itself before I attempted to go to my vehicle.

(Tr., p.612, L.4 – p.614, L.11.)

While the others were in the street and Mr. Kron was apologizing to them, Mr. Johnson "heard someone say, like, 'This is because of an outsider, and I should kill him,' or somewhere [sic] along the lines of that." At that point, he "went back inside hoping that they would leave. And I grabbed a knife, because I could see the body language in these people, that they looked like they were going to approach me with a physical altercation." Mr. Johnson then returned to the front porch, put the knife in his pocket, and began smoking a cigarette while he waited for the area around his truck to clear. He explained that his intent in carrying the knife was "that if any sort of physical altercation – or altercation came towards me that I could just present the knife and just resolve that, and hopefully it wouldn't be a – kind of scare them away."

Mr. Johnson then began sending text messages to his girlfriend, attempting to get her to pick him up. As he was putting his phone back in his pocket, "I got a glimpse of people moving towards me, advancing towards me on the porch." When he looked up, he saw Mr. McCane "standing in the middle of the porch way . . . [h]alfway between

the door and the far wall." Based on the significant differences in size between Mr. McCane and Mr. Johnson (he is five feet, eight inches tall and weighs one hundred sixty pound, while Mr. McCane "was about six-two, six-three, anywhere from 250 to 260 [pounds]"), Mr. Johnson was concerned that Mr. McCane could inflict serious bodily injury upon him, and felt that he was under severe threat from Mr. McCane. Mr. McCane then "took a few steps toward me and I retreated back [to the wall at the far corner of the porch] and he swung." Mr. Johnson explained that, while retreating, "I started pulling the knife out of my pocket, hoping that he would see it . . . I then was backed up in a defensive manner and put my hand up like this (indicating), as I seen [sic] a punch coming towards me. And I swung the knife with my head down." He explained that swinging the knife "was a reaction. I felt like I was being bombarded. It was just an instinct." (Tr., p.615, L.4 – p.624, L.14.) Mr. Johnson testified that he "[n]ever" had any intent to cause severe bodily harm to Mr. McCane, and that when he used the knife, he was acting purely in self-defense. (Tr., p.634, Ls.11-18.)

After stabbing Mr. McCane, Mr. Johnson noticed Ray Lopez coming at him, trying to grab him and take a swing at him. He was able to run to his truck, with Mr. Lopez "right behind me, grabbing me." He had to kick Mr. Lopez to get free of his grasp, and managed to pull the truck door shut. At that point, Mr. Lopez punched through the window, breaking it, and Mr. Johnson was able to lean out of the way of the punches before speeding away. (Tr., p.624, L.15 – p.625, L.11.)

Once he had gotten safely away from the scene, Mr. Johnson went to his girlfriend's house, where he told her, "I was just in an altercation and I think I stabbed somebody." He then changed out of his bloody shirt and called 911 to report the stabbing. The 911 call ended up getting disconnected, and the 911 operator eventually

called him back. Mr. Johnson described himself as being "in shock and still hysterical about what had happened" when the 911 operator called back. When asked to give his name, he "got scared and locked up and gave them a false name."[3] At that point, his girlfriend was driving him to his house, and they were pulled over by several police officers. (Tr., p.625, L.20 – p.628, L.24.)

Following several jury questions, Mr. Johnson was found guilty of murder in the second degree. (R., pp.132-38.) At the sentencing hearing, the State requested the imposition of a unified sentence of forty-five to fifty years, with twenty years fixed. (Tr., p.800, L.23 – p.801, L.14.) Defense counsel requested "a unified sentence of 10 to 15 years with a fixed [term] not to exceed five to eight." (Tr., p.805, Ls.6-12.) Ultimately, the district court imposed a unified life sentence, with fifteen years fixed. (Tr., p.815, Ls.14-16.)

Mr. Johnson filed a Notice of Appeal timely from entry of the judgment of conviction. (R., p.149.) Mr. Johnson then filed a timely Rule 35 motion and requested a hearing on that motion. In support of his motion, Mr. Johnson provided new information, specifically that since his sentencing, "I am continuing [to pursue] my degree as well as several other programs and classes," and that he had "not received any discipline actions and only continue to focus on the positive opportunities there are to better myself with the resources available." (R., p.169.) The district court denied the request for a hearing (R., p.179), and later denied the Rule 35 motion. (Order Denying Rule 35 Motion (augmentation).)

[3] The false name that Mr. Johnson provided was "George Hernandez." (State's Exhibit No. 1, 0:00 to 0:58.)

ISSUES

1. Did the district court err when, over his Idaho Rule of Evidence 403 objection, it admitted four autopsy photographs without conducting the balancing test required under Rule 403?

2. Did the district court abuse its discretion when it imposed a unified life sentence, with fifteen years fixed, following Mr. Johnson's conviction for murder in the second degree?

3. Did the district court abuse its discretion when, in light of the new information provided, it denied Mr. Johnson's Rule 35 motion?

ARGUMENT

I.

The District Court Erred When, Over His Idaho Rule of Evidence 403 Objection, It Admitted Four Autopsy Photographs Without Conducting The Balancing Test Required Under Rule 403

Mr. Johnson objected, under Idaho Rule of Evidence 403, to the introduction of several autopsy photographs, primarily due the limited probative value that the photographs had given his stipulation to the cause and manner of death. The district court, without conducting the balancing test required under Rule 403, admitted four of the proposed exhibits. This failure to conduct the required balancing test amounts to error, and should result in the reversal of Mr. Johnson's conviction.

Idaho Rule of Evidence 403 provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." I.R.E. 403.

The Idaho Supreme Court has explained Rule 403 as follows:

> The rule creates a balancing test. On one hand, the trial judge must measure the probative worth of the proffered evidence. The trial judge, in determining probative worth, focuses on the degree of relevancy and materiality of the evidence and the need for it on the issue on which it is to be introduced. At the other end of the equation, *the trial judge must consider whether the evidence amounts to unfair prejudice . . . Only after using this balancing test*, may a trial judge use his discretion to properly admit or exclude the proffered evidence.

Davidson v. Beco Corp., 114 Idaho 107, 110 (1987) (internal citations omitted) (emphasis added). This Court has upheld the admission of graphic photographs of a murder victim's body after a district court conducted the proper balancing test articulated in *Davidson*. *See State v. Enno*, 119 Idaho 392, 407 (1991) ("The trial court balanced the unfair prejudicial value of the photographs with the relative probative value

and concluded that the four photographs allowed into evidence were less inflammatory than the other [six] photographs, and that they also clearly contained relevant evidence to a contested issue in the case.").

In this case, the district court was faced with a Rule 403 objection to several of the State's proposed exhibits, photographs from an autopsy of Mr. McCane, which were labeled State's Exhibit Nos. 36 to 40. (Tr., p.381, L.15 - p.393, L.1.) While the district court appears to have conducted the requisite balancing test in excluding one of the proposed exhibits (Tr., p.406, L.4 – p.407, L.10), specifically finding that the excluded exhibit "tends to be inflammatory, and there's no fact at issue that the photo, No. 36, establishes"[4] (Tr., p.406, L.4 – p.407, L.10), it failed to do so with respect to the remaining four photographs. In reaching its decision to admit the remaining four photographs, the district court explained the standard to be employed,

> Let me first of all apply the standard. We're talking about, you know the – there's a – this is ultimately a discretionary call on the court. First of all, I looked at is it relevant. Are there facts at issue in the case that these exhibits and photographs will assist the jury in deciding. And then are they outweighed by cumulative or prejudicial or inflammatory impact that might inflame the passions of the jury.

(Tr., p.400, Ls.5-14.)

The district court then cited to several appellate cases concerning the admission of photographs of murder victims. (Tr., p.400, L.15 – p.402, L.17 (citing *State v. Hawkins*, 131 Idaho 396 (2000), *State v. Reid*, 151 Idaho 80 (Ct. App. 2011), and *State v. Peters*, 116 Idaho 851 (Ct. App. 1989)). Recognizing "that there's a lot of facts in this case that are just not contested" including "who was present, the events that occurred, or the cause of death," the district court then explained,

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[4] The State's proposed Exhibit No. 36 was described as "the face of the victim on the autopsy table." (Tr., p.398, Ls.14-15.)

> But in this instance there is a factual issue before the court of not the cause of death, but the degree of culpability in the cause of death. And that's the, as I understand, the state's relevancy of this exhibit [sic], is to establish the degree of culpability. And I'm going to permit those exhibits to be admitted, and I'm going to make an admonition to the jury.
>
> . . .
>
> The other exhibits that you have offered [other than 36], based on the issues before the court, are appropriate – are necessary, and I will advise the jurors about that, and they've been warned about this coming up. So I'll allow those to be – provided you continue to lay the foundation with your witness.
>
> All right. So I've ruled on those, got the arguments. And just noting for the record, just to recapitulate. It isn't – there is a factual issue that hasn't been stipulated to, and that is the factual issue of the degree of culpability in the crime. And that is reflected – or at least the state's position is that can be determined by the testimony – supported by the testimony of your witness. So that's an issue before the jury for them to consider and the witness to be cross examined on.

(Tr., p.405, L.21 – p.407, L.7.)

As can be seen from the district court's explanation for admitting State's Exhibit Nos. 37 through 40, it clearly considered the relevance of the exhibits, but never balanced the relevance of the exhibits against the potential for substantial prejudice as required under Rule 403. This failure amounts to error, and should result in Mr. Johnson's conviction being vacated, with the matter remanded to the district court for a new trial.

II.

The District Court Abused Its Discretion When It Imposed A Unified Life Sentence, With Fifteen Years Fixed, Following Mr. Johnson's Conviction For Murder In The Second Degree

Mr. Johnson asserts that, in light of the mitigating circumstances present in his case, including his sincere expression of remorse and regret and his lack of any prior

felony convictions, the sentence imposed by the district court is excessive and amounts to an abuse of discretion.

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982). The Idaho Supreme Court has held that, "'[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.'" *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Johnson does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Johnson must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* These governing criteria are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.*

Mr. Johnson has continuously expressed remorse and regret and accepted responsibility for his role in the death of Mr. McCane. The night of his arrest, Mr. Johnson asked the police about Mr. McCane's condition, and "[w]hen notified Jarmey had died, Nicholas had tears in his eyes and said, 'It was fucked up, he had taken a life, and it was on his hands.'" (Presentence Investigation Report (*hereinafter*, PSI), p.4.)

When asked to explain how he felt about his crime, Mr. Johnson wrote,

> Horrible. I went to an environment that I didn't expect any type of altercation and when things began to get hostile I should have made better decisions. I cannot believe that this actually happened. I could never be prepared for this Situation [sic] and handled it horribly. I never

> intended to hurt anyone let alone take a life. I feel horrible for Mr. McCain's [sic] family and loved ones and wish I could go back and see things as clearly as I do now. It was a bad situation that led to a bad decision that resulted in the loss of a life that was never intended. It's a tragedy for all parties involved, even my family. I cannot express how truely [sic] sorry I am.

(PSI, p.8 (quotation marks omitted).) He also explained that his crime "is something I have to live with every day." (PSI, p.8 (quotation marks omitted).)

Prior to sentencing, Mr. Johnson again expressed remorse and regret while accepting responsibility, explaining,

> I would like to apologize to everyone here today. I am truly sorry for the mistake that I made that ended in absolute tragedy. I have spent the last six months in constant regret, wishing that I could go back and change things. Sadly, all I can do is tell you guys how truly sorry I am and hope that one day you can all forgive me.
>
> I am very sorry for my poor judgment, and I do feel the guilt of my actions, actions for which I acknowledge and take full responsibility for. Everything had happened so quickly, and I never expected this outcome. I may never fully know the pain that you are all feeling, but I do understand the damage that I have done.
>
> I have let down so many people that expected so much more of me, and I hurt people that I do not know. I never intended for any of this, and you all deserve better. Again, I am truly sorry. Thank you.

(Tr., p.807, Ls.6-25.) The PSI writer noted, "Mr. Johnson did appear remorseful when I interviewed him." (PSI, p.22.)

The events underlying this case had their genesis in alcohol use. As Mr. Johnson explained regarding his use of alcohol, it has "[p]roved to be a problem every time I used it." (PSI, p.21 (quotation marks omitted).) The PSI writer noted, "The defendant was intoxicated when he committed the present offense." (PSI, p.22.) With respect to his alcohol issue and the role it played in this offense, Mr. Johnson has expressed a desire to participate in alcohol treatment. (PSI, p.22.)

Mr. Johnson, who has six younger siblings, had a troubled and turbulent childhood. His parents divorced when he was twelve years old, due to his mother's use of illegal drugs. His father had abused alcohol until Mr. Johnson was about twelve years old. After the divorce, his mother continued to abuse illegal drugs, and Mr. Johnson "moved back and forth between his parents while growing up." When he was fourteen, he and one of his brothers moved to Missouri to live with their father. Upon returning to Idaho one year later, "he noted, 'My mother was using drugs even worse than before, the house was disgusting, and there was no food to eat. She had been trading our food stamps for meth.'" Soon thereafter, Mr. Johnson's siblings were removed from their mother's home and placed into foster care. However, Mr. Johnson was not placed in foster care because "[t]hey said I was too old and unwilling to go." His father returned to Idaho to deal with the situation, and eventually gained custody of Mr. Johnson's siblings. During that time, however, Mr. Johnson "dropped out of school and worked to help his father." His mother continued to abuse drugs, making no attempt to help her children. (PSI, pp.17-18.)

Mr. Johnson enjoys the support of his family, reporting that "he shares a close bond with his brothers and sisters." (PSI, p.17.) Since his troubled childhood, his mother has gotten clean, begun going to school to become a nurse, and they have gotten close. He described his relationship with his father as "[a]mazing." One of Mr. Johnson's sisters, Denise, told the PSI writer, "Right now, we are actually really close, like best-friends close. He is a good person and cares for his family and adores his daughter." (PSI, p.18 (quotation marks omitted).)

Several other mitigating factors are present in Mr. Johnson's case. First, this case represents Mr. Johnson's first and only felony conviction. (PSI, p.22.) Second,

"[a] representative of the Canyon County Sheriff's Office confirmed [that while in custody on this offense] the defendant received two minor infractions and noted he is, 'Overall, a pretty good inmate.'" (PSI, p.17.) Third, Mr. Johnson has expressed a desire to engage in "self changing classes, drug/alcohol classes as well as mental health sessions," and has explained that he will do his "best to works [sic] towards redemption," and that any sentence he receives "will not just be a sentence for me but an opportunity to open my eyes to my faults and to rehabilitate myself to become an active member of society." (PSI, p.22.) Finally, Mr. Johnson, despite not having completed high school or obtained a G.E.D.,[5] began attending classes at Treasure Valley Community College shortly before the incident resulting in his conviction. (PSI, p.20.)

In light of the mitigating factors present in his case, Mr. Johnson asserts that the district court abused its discretion when it imposed a unified life sentence, with fifteen years fixed, following his conviction for second degree murder. He asserts that the appropriate sentence for his offense is fifteen years, with five years fixed.

III.

The District Court Abused Its Discretion When, In Light Of The New Information Provided, It Denied Mr. Johnson's Rule 35 Motion

A motion to alter an otherwise lawful sentence under Idaho Criminal Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether

[5] Mr. Johnson has expressed a desire to earn a G.E.D. (PSI, p.20.)

the original sentence was reasonable." *Id.* If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction. *Id.*

When new information has been presented in support of a Rule 35 motion, the appellate courts conduct "an independent review of the entire record available to the trial court at sentencing, focusing on the nature of the offense, the character of the offender and the protection of the public interest." *Id.* When determining whether a sentence is excessive, the appellate courts "consider the entire length of the sentence under an abuse of discretion standard to determine its reasonableness." *Id.*

Mr. Johnson provided new information in support of his Rule 35 motion, namely, that, since his sentencing, "[d]uring my incarceration I am continuing my [Structural Fire Science] degree as well as several other programs and classes," and that he had "not received any discipline actions and only continue to focus on the positive opportunities there are to better myself with the resources available." (R., p.169.)

Mr. Johnson asserts that when this new information is viewed together with the mitigating circumstances discussed in part II, *supra*, he has demonstrated that the district court abused its discretion when it denied his Rule 35 motion. For the reasons set forth herein and in part II, Mr. Johnson respectfully requests that this Court order that his sentence be reduced to a unified sentence of fifteen years, with five years fixed.

CONCLUSION

For the reasons set forth herein, Mr. Johnson respectfully requests that this Court vacate the judgment of conviction and remand this matter to the district court for a new trial. Alternatively, he respectfully requests that this Court reduce his sentence to a unified sentence of fifteen years, with five years fixed.

DATED this 26th day of December, 2012.

SPENCER J. HAHN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 26th day of December, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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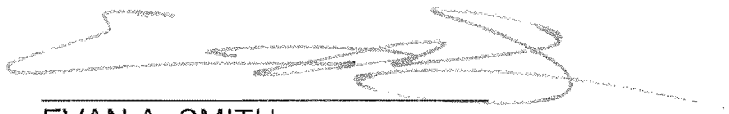

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